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No.

Supreme Court, U.S.
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In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

JAY GRUSHKIN
Petitioner In Pro Per
1381 Franchere Place
Sunnyvale, Ca. 94087

408-739-1829

October 29,1990

QUESTIONS PRESENTED

1. Does the First Amendment right to Petition Government for Redress of Grievances and the Due Process clause require that court proceedings taking liberty and property be reported by a court reporter ?

2. Does the fourteenth amendment equal protection clause prohibit a state judge denying to some citizens a customary right to have court proceedings reported ?

3. Does Due process of law prohibit a state system where lawyers are permitted to sit as if they were elected and competent judges and claim to be judges *pro tem* to enter orders taking liberty and property of citizens ?

4. Following this court's decision in *Keller v. State Bar,* 495 U.S.

___, 110 L.Ed.2d.1, 110 S.Ct. ____ overruling 767 P. 2d. 1020, 255 Cal. Rptr. 542, (June 4, 1990), may a state revoke a final judgment of custody of a child without statutory notice to the custodial father and his attorney of record if a non-lawyer volunteer of a California State Bar Association, also ex parte without statutory notice or any hearing, claims to have enrolled the attorney of record as an inactive member of the trade group when the statute requires notice to the attorney of record when she is not suspended or removed ?

5. Following this court's decision in Keller v. State Bar, Supra, does a state deny the equal protection of the law by refusing to apply

state law requiring 10 days' notice to attorney of records and parties, written motions specifying grounds, hearings, grounds, reported proceedings by asserting that none of those rights apply if the citizen's attorney of record is ex parte, also without notice or hearing, enrolled by a volunteer of a state bar association involuntarily as an inactive member of their trade group for her refusal to take an oath to its alleged State Bar Court ?

6. Following this court's decision in Keller v. State Bar, supra, are state laws which claim a non-lawyer volunteer of a trade group, ex parte, abolishes the contracts of employment of citizens with their lawyers state laws impairing the

obligation of contracts in violation of Article 1, section 10 of the United States Constitution ?

7. May a state discriminate in parenting rights and solely by reason of sex, so that fathers are denied rights accorded to mothers of notice to them, motions, service of process, hearings, findings of the " best interests of a child " prior to revocation of their final custody judgments ?

8. May a White father be discriminated against by a Black judge and Black lawyer acting on behalf of an Hispanic mother so as to deny a White father all of his due process rights- notice, service, motion, hearing, grounds, opportunity to appear and defend prior to revocation of his permanent Custody

Judgment and do so solely by reason of his White race ?

9. After revoking, without notice, motion, or hearing, a Final custody judgment, may a state condition the right to parent one's child on a parent's submission to a lay counselor making a judicial order of parenting rights and require a parent to forfeit their rights to a hearing, court proceedings, a fair and impartial judge, right to introduce evidence, confront and cross-examine witnesses, and their right to have findings consonant with state law by a lawful judge of a lawful court of law ?

LIST OF PARTIES

The parties in the Petition for a Writ of Certiorari are as follows :

HON. LA DORIS CORDELL
Judge of the Superior Court
Santa Clara Superior Court
191 North First Street
San Jose, Ca. 05113

ROSIE JIMINEZ GRUSHKIN
C/O Richard C. Williams, Esq.
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Suite 904
San Jose, Ca. 95113

TABLE OF AUTHORITIES

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No.

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1990

JAY GRUSHKIN,

Petitioner

vs.

SANTA CLARA SUPERIOR COURT

Respondent

Your Petitioner, a custodial father under a Final Judgment entered three years ago, which, as herein described, was revoked ex parte without notice, motion, or hearing, appears In Pro Per.

Petitioner appears without counsel as California attorneys are too frightened of ex parte takings of their careers and next day

arrest and imprisonment to represent any citizens facing similar ex parte takings.

The principal question presented is whether a custodial father may be denied statutory notice of a proceeding to revoke his three year old judgment by asserting notice to him and his attorney of record are not necessary nor is any motion or hearing if his attorney of record is ex parte enrolled as an inactive member of the California State Bar Association by a non-lawyer volunteer of that trade group, when the statutes require notice to the attorney of record when the attorney of record is not suspended or removed and also to the party at his residence address ten days before hearing.

The second serious constitutional issue is whether a state may condition a parent's right to see one's child on waiver of a judge, hearing, evidence, and statutory findings by a real judge of a court of law and be forced to submit to a non-lawyer lay person making a court order.

The California state supreme has authorized vested rights to be revoked without notice or hearing by a lay person and conditioning rights of citizens on their submission to orders made by a private unelected person. Conway v. State Bar, 47 Cal. 3d. 1107, 255 Cal. Rptr. 390, 767 P. 2d. 657 (1989).

Petitioner and his daughter, Natassia, age 5, were subject to the police invading their home

September 6,1990, taking Natassia and delivering her to her mentally unstable mother who had been denied all custody rights in the 1987 Final Judgment due to her prior abduction and kidnapping of said child at age 1 and her history of mental instability. Appendix B: 4-5.

The no motion/ no notice Family Court order revoking the 1987 Final Custody Judgment which had awarded full custody of Natassia to Petitioner was entered that day by a San Jose judge. The judge awarded exclusive custody to the mother ex parte. Appendix F. This was done without grounds, without a motion, without notice, without a hearing. It was done without evidence. It was done by a black judge for a black lawyer acting for an Hispanic

mother while the Petitioner is white. Appendix B: 44-46. It was done by the San Jose judge so as " to get Mr. Grushkin's attention." Appendix F.

Said order requires Petitioner to allow a lay person make an order if he is to ever see his daughter again and waive his rights to a hearing, judge, evidence, confrontation, cross-examination, courtroom in order to see his daughter. These forfeitures of constitutional rights in order to parent are known as San Jose's " Screening " rules. Appendix B: 46-53.

Petitioner requests this Court take jurisdiction to void the San Jose state court's scheme known as " Screening," approved by the California Supreme Court, and to de-

clare unconstitutional state practices of revoking final judgments of parenting rights based on sex and race discrimination and without required notice, motion, hearing to select parents on the basis such state practices deny to said targeted citizens the equal protection of state laws.

OPINIONS BELOW

The California Supreme Court's order denying the Petition after Judgment by the Court of Appeals, entered October 17,1990 appears at Appendix A, and the Petition at Appendix B. The Court of Appeals' order denying the Petition entered September 14,1990 appears at Appendic C, and the Petition at Appendix D. The Santa Clara Superior Court Ex Parte Order of September 6,1990

revoking the 1987 final judgment appears at Appendix E. The transcript of the September 6, 1990 proceeding appears at Appendix F.

The constitutional issues were first raised in the Court of Appeals on September 7, 1990.

JURISDICTION

Jurisdiction is invoked under 27 U.S.C.s. 1257 where the California Supreme Court's denial of the emergency Petition has decided United States Constitutional issues in a manner contrary to the express holdings of this Court concerning rights to notice, service, motions, time to prepare, hearings, and required grounds prior to the revocation of vested rights as set forth in In re: Gault, (1966) 387 U.S. 31, Armstrong v. Manzo, 380 U.S.

545, 552 (1965), and Mathews v. Eldridge, 424 U.S. 319, and this court's decisions voiding state processes which force citizens to forfeit one constitutional right in order to have another in Speiser v. Randall, 357 U.S. 513 (1958), Frost and Frost Trucking Co. v. Railroad Commission, 272 U.S. 583 (1926). This petition is timely filed within sixty days of the California Supreme Court's order Oct. 17, 1990.

CONSTITUTIONAL PROVISIONS

UNITED STATES CONSTITUTION

Article I, section 10 No State shall pass any Law impairing the Obligation of Contracts...

Amendment 1. Congress shall make no law abridging the right of the People to petition the Government for a redress of grievances.

Amendment V. No person shall be deprived of life, liberty, or property, without due process of law... Amendment XIV, section 1. nor shall any state deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

CALIFORNIA PROVISIONS

The applicable provisions are set forth in the Appendix.

STATEMENT OF THE CASE

I. Background

In the wake of the California Supreme Court's authorization of ex parte takings by a non-lawyer volunteer of a California State Bar Association and forcing a licensed lawyer to let a volunteer decide if he works and who he should repre-

sent, Conway v. State Bar, 47 Cal. 3d. 1107, (1989), the San Jose courts have followed suit with ex parte revocations of final judgments, refusals to have court proceedings reported, with lawyers or lay people sitting as judges, police invasions of innocent citizens' homes taking their children and changing custody to the other parent without notice, and then requiring these targeted citizens, just as the Jewish people were required in Germany, to give up their constitutional rights to a judge, hearing, public proceeding, trial in a court of law, by letting a lay person privately make an order if they shall ever be allowed to see their children again. If the citizen does not forfeit all their

rights, they can not see their children again.

II. Facts

On August 24,1987 a Final Judgment of Dissolution (Divorce) was entered in the Santa Clara Superior Court. The parties were Petitioner, Jay Grushkin and Rosie Grushkin, Respondent in the control action docket no. 607271. The cross-action of Rosie Grushkin vs. Jay Grushkin, docket no. 607066 was consolidated into this case. The Final Judgment on both cases was obtained by Petitioner's attorney of record, Betsey Warren Lebbos. Appendix G.

Custody of Petitioner's daughter, Natassia, age 2, was awarded to Father Petitioner. Only supervised visitation, if any, was a-

warded to the mother. The mother was found in contempt on 18 counts for thwarting visitation. The Judgment directed that the abduction/ kidnapping of said child by the mother be referred to the District Attorney's offense. A bench warrant issued for the mother's arrest due to her abduction/kidnapping of said child. Said Final Judgment appears at Appendix G.

Less than a year later, said mother was apprehended on said bench warrant, arrested, and imprisoned. Natassia, then age 2, was turned over to her custodial parrent, Petitioner herein, with whom she has resided continuously since early 1988. Appendix B: 3-4.

As stated by Petitioner in his emergency Petition September 7,

1990, " .. Although an attorney called months ago indicating his interest in representing the real party in interest, (the mother), I have never been served with any papers and have never heard from this lawyer again.... Pursuant to the attached, my attorney of record, who was required to be served, was never served either.... On September 6, 1990, when I arived at one of the stores in the afternoon, someone handed me a letter postmarked September 4, 1990 .., claiming that I was supposed to be in Court that morning, September 6, 1990 at 8.45 A.M. Although the letter is dated August 30,1990, the envelope from the attorney, Richard Williams, was, in fact, not postmarked until September 4 and was

sent to a business address where I do not work regularly." Appendix D: 13, para. 20-22.

As stated in Father's Emergency Petition to the California Supreme Court, " Natassia's long fought-for recovery for the last two and one half years from the abduction and kidnapping and her progress in her stable home, with her father and grandparents, her friends, her brand new school she had just started that day in her first day of first grade, was destroyed. On the evening of September 6,1990, all gains were lost when the police re-terrified Natassia, by crashing into her safe home, grabbing her, flashing some order, and taking her away with her dangerous, mentally unstable mo-

ther. The only transcript shows the Judge seems to think nothing of destroying children's stabilities and revoking permanent judgments arbitrarily..." Appendix B: 4-5.

It is admitted the attorney who obtained the order revoking the permanent judgment on behalf of the non-custodial mother, Richard Williams, without notice to the Petitioner or his attorney of record, was not, in accordance with California law, the attorney for such party as she had a different attorney of record and had failed to notify either the Petitioner or his attorney of record of any change of attorneys. Appendix B: 35-38. (1)

This attorney, Richard Williams, admitted that he did not

have any written motion pending on September 6, 1990 when he obtained an order revoking the permanent custody judgment. The attorney admitted that he was in court solely on a claimed letter he sent and proof of service of the letter only. " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7.

It is also undisputed that this claimed letter from the attorney, which appears at Appendix H-1 was dated August 30,1990. The

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(1) In order to be an attorney of record for the mother, the attorney was required to obtain a substitution of attorneys duly signed, filed, and served on both the opposing party and his attorney of record prior to the court being authorized to recognize him. California Code of Civil Procedure sections 284 and 285.

proof of service of the letter is dated August 31,1990. Appendix H-2. But the actual postmark of the envelope enclosing the letter was September 4, 1990 with the hearing on September 6,1990 at 8:45 a.m. Appendix H-3.

State law required ten days written notice with five days added for service by mail. It required a written motion on a form approved by the Judicial Council and not a letter. Ca. Code of Civil Procedure sections 1003 and 1005, California Rules of Court, Family Law Rules, Rules 1225 (a) and 1285.10.

The letter was sent to one of the Petitioner's stores and not, as required by state law, served on him at his residence. (2) Said attorney and judge admitted the

claimed letter was not served as required at the Petitioner's residence. " This is the letter I sent in. .. It was sent to a place called Lowe Paint Company ?... That's where he worked. He has gotten mail at that company. That is his address... And you got no response ? ... No, not to mention Mrs. Grushkin spoke to him." Appendix F:2: 10-16.

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(2) Ca. Code of Civil Procedure s. 1011 states, " The service may be personal, by delivery to the party or attorney on whom the service is required .., or it may be as follows... (b) if upon a party, service shall be made in the manner specifically provided in particular cases, or, if no specific provision is made, service may be made by leaving the notice or other paper at...the party's residence, between ... 8 in the morning and six in the evening, with some person of not less than 18 years of age ... If the party's residence is not known, then service may be made by delivering the... notice or papers to the clerk of the court.."

It was also agreed by the attorney and the judge that Petitioner's attorney of record was never served. State law, as herein described, requires notice to an attorney of record unless the attorney is suspended or removed. The attorney is not suspended or removed. The transcript indicates that the state judge and attorney ignored the need for notice to the attorney of record, as follows, at Appendix F:2: 1-18; 4: 11-12.:

" The Court: Number 8, Grushkin

Mr. Williams: Richard Williams appearing for the moving party, Mrs. Grushkin. In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. He is not here and he is aware of it. The Court indicated that you would give us a change of custody order. If I may approach the bench. This is the letter I

sent ...

The Court: I am going to change custody."

The September 6, 1990 order revoking the final custody judgment of 1987 indicates that it was entered on an alleged motion of May 22, 1990. Appendix E-1. Said motion admittedly had a blank proof of service. Appendix I-2. That motion had been returnable July 16, 1990. Said motion appears at Appendix I. The attorney admits he never had it served on either the Petitioner nor his attorney of record. Appendix H: 2-3.

The court record indicates the San Jose judge did not have her proceedings reported on the return date, July 16, 1990. Appendix B:2, footnote 2. Although state practice

and local rule require an unserved motion must be taken off the calendar on the return date when there is no proof of service, the calendar note indicates the San Jose judge put " continued to 8-15-90 " instead. (3) On August 15,1990, there is no record with the judge. Appendix B: 2, footnote 2.

Instead, a lawyer, Sandra Cully, was permitted to appear as

(3) Santa Clara County Local Rule 17, Section A, Law and Motion, entitled " Time Requirements for Filing and Service," states the following : " Moving and responsive pleadings must be filed and served on the opposing party or attorney." Santa Clara Family Court Rules, Rule 17, Section A, " Law and Motion," states under 3." Proof of Service," that " if a responding party fails to appear at a hearing, the moving party must immediately submit proof of timely service to the Court; Otherwise, the matter will be taken off calendar. (emphasis added). "

a Judge Pro Tem. Appendix B:23. San Jose judges regularly let bar politician lawyers sit for them. This lawyer then let Petitioner's former wife, Rosie Grushkin, appear as Petitioner's attorney. Appendix B: 23. Ms. Grushkin is not a lawyer. She obviously could not be the lawyer for her opposing party. Then the lawyer let Rosie Grushkin's lawyer appear as the other side representing Rosie Grushkin. Appendix B: 23.

This lawyer then entered an order on this fraud of Rosie Grushkin claiming to be Jay Grushkin's lawyer ordering the " parties" to mediation and for Petitioner to fill out the papers by September 1, 1990. Appendix B: 23.

However, for unknown reasons,

since none of the proceedings were reported by the judge, except the fifth court appearance on September 6, 1990, attached hereto as Appendix F, the case without a motion, notice, service, appears on an August 23,1990 calendar. Appendix B: 23-24. Once again the judge lets a lawyer replace her. The lawyer, Sandra Cully, now lets respondent's attorney who is not the attorney of record, consent to this lawyer sitting without any appearance from the other side. Appendix B:25.

The judge then lets Mr. Williams " waive a reporter." Appendix B:25. She then enters an order that the case is continued to the next available space and " Dad must be present at screening, if not a bench warrant will be issued."

Appendix B: 25.

Then on August 29,1990, the Judge once again refuses to have her proceedings reported and orders Mr. Williams to go to the calendar and get a new date and send notice to the father. Appendix B: 26-27.

On September 6, 1990 the Judge allows the final judgment to be revoked on a claim of Mr. Williams he sent a letter and does so " in order to get Mr. Grushkin's attention." Appendix F:2:1-18, 5:6-8.

The judge herself is involved in an acrimonious divorce where she has refused to permit any physical custody rights to her former husband and is residing with another women. (4)

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(4) In re: marriage of Cordell, Santa Clara Superior Court, docket no. P49071.

The no motion/ no notice order indicates it was entered with no evidence presented. Refer Appendix E:1 indicating order was entered with no evidence presented as the box for evidence presented is not marked off. It awarded custody to the mother with reasonable rights of visitation to father. It concludes," Should Petitioner wish to contest this order, the parties shall immediately participate in screening through Family Court Services on an emergency basis." Appendix E:4.

Screening, as presented to the California Supreme Court, is San Jose's revocation of the State's Mandatory Mediation law and unlawfully requires a parent to forfeit their right to a hearing

before a judge and submit to an order of custodial rights entered by a non-lawyer in order to parent, and which procedure herein described is unconstitutional as an unlawful delegation of judicial power to a lay person and abolishes the parent's freedom to contract.

Although state law effective January 1, 1990 prohibits any ex parte custody orders, unless there is a showing of immediate harm to the child or immediate risk the child will be removed from the State, San Jose has ignored state law for years and selectively has judges and lawyers entering oral deals in the hallway to enter orders without notice or hearings or grounds. (5) Requests to the Federal government to indict

the judges and lawyers involved have been made. To prevent that, judges are now refusing to have their proceedings reported in select cases, such as the Petitioner's. As Appendix F indicates, the judge and the lawyer discuss their pre-arranged deal to change custody entered before the hearing. " The Court indicated it would give us a change of custody order. " Appendix F:1: 7-8.

As the transcript makes clear, the court deliberately refused to make the required statutory find-

(5) " The Court shall refrain from making any order granting or modifying a custody order on an ex parte basis unless there has been a showing of immediate harm to the child or immediate risk that the child will be removed from the State of California. The court must restrain the person receiving custody from removing the child from the state." Ca. Civil Code section 4600.1.

ings as there were no grounds to revoke the final custody judgment except the judge's personal desire to " get Mr. Grushkin's attention." Appendix F: 5: 6-8.

Such denial of rights to the attorney of record's clients and their children in order to retaliate against their attorney going to the Grand Jury and her refusal to take an oath to an alleged State Bar Court or enroll in it is a matter of which this Court should take judicial notice pursuant to the pending Petitions with this Court. Retaliating against thousands of clients and children on completed final judgments obtained over 15 years because their attorney of record is seeking to protect thirty million United States citi-

zens' rights to vote to create their own courts and elect and remove their own judges to their own courts is a matter of serious Constitutional concern.

REASONS WHY THE WRIT SHOULD BE GRANTED

I.

DUE PROCESS OF LAW REQUIRED NOTICE TO THE PETITIONER'S ATTORNEY OF RECORD

In light of this court's decision that " a parent's desire for and right to the companionship, care, custody, and management of his or her children is an important interest that undeniably warrants deference and, absent a powerful countervailing interest, protection," as stated in Little v. Streater (1980) 452 U.S. 21, at p. 21, Stanley v. Illinois, 405 U.S. 645,

651, do state procedures where no notice is afforded to either the attorney of record or the party, no written motion, no grounds stated or proved, and no hearing held prior to revocation of a Final custody judgment such state practices and procedures which offend the minimal Due Process requirements of the fifth and fourteenth amendment ?

Both the judge and the lawyer confirm no notice was attempted to be given to Petitioner's attorney of record prior to revocation of the Final Judgment. The attorney said, " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7, and " This is the letter I sent

in. .. It was sent to a place called Lowe´Paint Company ?... That's where he worked. He has gotten mail at that company. That is his address...And you got no response ? ... No, not to mention Mrs. Grushkin spoke to him." Appendix F:2.

Mr. Williams admitted in his submission to the Court of Appeals that he never served either the Petitioner or his attorney of record, as follows, at Appendix H: 1: 28, 2: 1-21:

> " .. I called and spoke to Mr. Grushkin, acknowledging that he had not been properly served and not been given appropriate notice of the July 16, 1990 hearing. Mr. Grushkin and I agreed that the matter would be continued to the 15th of August, 1990, and that he would be there with his attorney. I advised him that the parties would be ordered to mediation at Family Court Services who would sort the matter out. Mr.Gruskin failed to appear (as per his agreement) on

> August 15, 1990 at 1:30 p.m. and the Court ordered me to mail notice to Mr. Grushkin of a continued hearing date... on August 29,1990 I was directed to send Mr. Grushkin yet another letter indicating there was a screening appointment and that if he failed to appear the Court would issue an order for temporary change of custody.. .... The last date was September 6, 1990, and again he failed to appear and the Court changed custody."

The Petitioner disputes such an alleged oral conversation took place, and that " Although an attorney called months ago indicating his interest in representing the real party in interest, I have never been served with any papers and have never heard from this lawyer again...Pursuant to the attached, my attorney of record, who was required to be served, was never served either." Appendix D: 13: para 20-21.

Petitioner's attorney of record declared, in Declaration of No Notice, at Appendix D: 37-39, the following :

" I, Betsey Warren Lebbos, do hereby declare that I am a duly licensed attorney at law and am the attorney of record herein for the Petitioner. I have been an attorney for nineteen years. I am not and have never been suspended or disbarred. Pursuant to the state law cited, a post-dissolution judgment motion is required to be served on both the party himself and his attorney of record in the dissolution proceeding. I obtained the Dissolution Judgment and exclusive custody order with only supervised visitation to the real party in interest if and when the child was ever recovered from the abduction and kidnapping by the mother.... I have never heard of Mr. Williams. My name and address and phone number are listed in the yellow pages under " Attorneys." My phone number has been the same for about four years. At no time have I received any oral or any written notices from this Mr. Williams or his client about anything to do with the Grushkin case. I return phone calls in twenty-four hours. I have never received any phone calls or communications from this lawyer."

California Civil Code section 1014 provides a " defendant appears when an attorney gives notice of appearance for him," and " After appearance, a defendant or his attorney is entitled to notice of all subsequent proceedings of which notice is required to be given." Pursuant to California Rules of Court, Family Law Rule 1236, said provisions apply to Family law matters.

As the Final Judgment entered in both actions indicates, Petitioner's attorney of record is Attorney Betsey Warren Lebbos. Appendix G.

Civil Code section 1015 states, " But in all cases where a party has an attorney in the action or proceeding, the service of pap-

ers, when required, must be upon the attorney instead of the party, except service of subpoenas, writs, and other process issued in the suit, and of papers to bring him into contempt. If the sole attorney for a party is removed or suspended from practice, then the party has no attorney within the meaning of this section."

As stated in Reynolds v. Reynolds (1943) 134 P. 2d. 251, 21 C. 2d. 580, this section is concerned only with whether there is an attorney of record, not whether the party is represented by an attorney. In sum, attorneys who are the attorneys of records on final judgments going back 50 years and who subsequently decide to be an inactive member of the State Bar

for a year in order not to have to pay a huge dues bill for the year would have to go back through all of their 50 years of records and obtain new counsel for clients who don't need any on those thousands of final judgments when the parties do not need any new counsel and do so solely for that one year in order to not have their final judgments revoked ex parte.

The statute obviously seeks to address notice only to the attorney of record, unless the admitting court has suspended the attorney, not whether the client will now hire the attorney to represent them in the new controversy after the final judgment has been entered years before. When an attorney is suspended or removed, the Cali-

fornia Supreme Court orders the attorney to notify all clients. Ca. Rules of Court, Rule 955. When an attorney enrolls as an inactive member of the trade group, no notification is required to anyone.

Thousands of California attorneys enrolled as inactive members of the State Bar in order to avoid paying it 84 million dollars in dues, yet they are still the attorneys of record on final judgments going back years where notice to them is intended to be required prior to their clients having their old and final judgments revoked.

The statute clearly does not waive notice if an attorney enrolls or is enrolled as an inactive member of the State Bar. although the California Supreme Court's denial

seeks to add that to the plain meaning of the statute.

Consistent California law has required that service of a motion to modify a final judgment of dissolution involving the court's continuing jurisdiction over the welfare of children affected by said judgment must be made on the attorney of record under this section. Conae v. Conae (1952) 241 P.2d.266, 109 C.A. 2d. 696, Russ v.Russ (1945) 156 P. 2d. 767, 68 C.A. 2d. 400, Foy v. Foy (1937) 73 P. 2d. 618, 23 C.A. 2d. 543.

On February 14,1989 a non-lawyer volunteer of a California State Bar Association claims he ex parte, also without notice or hearing, enrolled the Petitioner's attorney of record as an inactive member of

their trade group. The attorney does not want the membership. The California Constitution says such membership is automatic anyway. Article 6, section 9, Ca. Constitution. She refused and does refuse to raise her hand and take an oath to a state bar court modeled on the special interest, trade group courts of Communist China. The 30 million United States citizens in the state never voted to allow the trade group to have a court. The attorney took an oath to the People and their constitutional rights to vote to create their own courts and elect and remove their own judges to their own courts. She can never break that oath and raise her hand to a court the People never voted to have in their state.

The attorney's license to practice law is not from a trade group. It is from a state supreme court which has issued no order preventing her from practicing law. see Lebbos v. Supreme Judicial Court, United States Supreme Court, docket no. 90-401, now pending, and also Lebbos v. State Bar " Court ", docket no. now pending.

Pursuant to this court's decision in Keller v. State Bar, supra, the California State Bar Association is a private membership trade group, akin to a labor union and not a governmental agency, for purposes of a Federal question. This Court stated the following :

" Of course the Supreme Court of California is the final authority on the 'governmental' status of the State Bar of California for purposes of state

law. But it's determination that respondent is a 'governmental agency,' and therefore entitled to the treatment accorded a governor, a mayor or a State Tax Commission, for instance, is not binding on us when such a determination is essential to the decision of a federal question. The State Bar of California is a good deal different from most other entities that would be regarded in common parlance as 'governmental agencies.'....

The state bar does not admit anyone to the practice of law, it does not finally disbar or suspend anyone nor does it ultimately establish ethical codes of conduct. All of these functions are reserved by California law to the state supreme court." (See Cal. Busn. & Prof. Code Ann. s. 6064, (1974) (admissions); s. 6067 (rules of professional conduct), s. 6100 (West Supp.1990) (disbarment or suspension)(emphasis added).....

The State Bar of California was created, not to participate in the general government of the State, but to provide specialized professional advice to those with the ultimate responsibility of governing the legal profession. Its members and officers are such not because they are citizens or voters, but because they are lawyers. "

Are this court's decisions in Armstrong v. Manzo (1965) 380 U.S. 545, 85 S. Ct. 1187, 14 L. Ed. 2d. 65, and Mathews v. Eldridge 424 U.S. 319 (1976) requiring notice and an opportunity to be heard at a meaningful time and place applicable to require that notice must be given to an attorney of record who is not suspended nor removed from the practice of law of any proposed modification of the final judgments she has obtained over 15 years ?

II.

THE ORDER REVOKING THE FINAL JUDGMENT WITHOUT NOTICE TO PETITIONER'S ATTORNEY OF RECORD DENIES HIM AND HIS DAUGHTER THE EQUAL PROTECTION OF STATE LAW

The question presented is whether the refusal of the state supreme court, the court of appeals,

and the trial court to require notice to an attorney of record in accordance with state law while all other citizens are guaranteed that notice to their attorney of record is required prior to revocation of their final judgments denies this Petitioner and his child the equal protection of said state law ?

Had the statute intended to not require notice to attorneys of record who become inactive members of the trade group later, the statute would clearly have so declared. Instead, it is limited by its terms to no notice only if the attorney is suspended or removed from the practice of law. Petitioner's attorney is not suspended nor removed from the practice of law. Is the State supreme court's refusal to

void the ex parte order when no notice was given to Petitioner's attorney of record an arbitrary and capricious discrimination against the clients of Attorney Betsey Warren Lebbos in a terrifying attempt to force her to take an oath to a communist-style trade group court and forfeit the right to vote of 30 million United States citizens in order to save her own clients' children's lives and safety ?

III.

EQUAL PROTECTION OF THE LAW IS DENIED TO A FATHER AND HIS DAUGHTER WHEN THEY ARE NOT SERVED NOTICE IN ACCORDANCE WITH STATE LAW

Because the attorney of record in a final Divorce judgment may die many years later or move, and this Court should take judicial notice

that, unlike other final judgments, Courts have continuing jurisdiction over children in a divorce action which may go on for over 20 years, state law was changed to require that notice of any motion post-final Dissolution Judgment must be given to both the attorney of record in the Dissolution Judgment and to the party personally. Ca. Civil Code section 4809 states that " after the entry of a final judgment decreeing the dissolution of the marriage.. no modification of such judgment... and no subsequent order in such proceedings shall be valid unless any prior notice required to be given to a party to a proceeding be served, in such manner as otherwise permitted by law to be served, upon the

party himself. For such purposes, service upon the attorney of record shall not be sufficient. " Gortner v. Gortner, (1976) 60 C.A. 3d. 996, 131 Cal. Rptr. 919.

State law prohibits a party serving. Sullivan v. Sullivan (1967) 64 Cal. Rptr. 82, 256 C.A. 2d. 301. The attorney admitted any claimed serve of a motion by Rosie Grushkin by her, which Petitioner says was never served, was void. Mr. Williams instead asserts he orally served the Petitioner by telephone call, as follows,at Appendix H:2-3:

> " I called and spoke to Mr. Grushkin, acknowledging that he had not been properly served and not been given appropriate notice of the July 16, 1990 hearing. Mr. Grushkin and I agreed that the matter would be continued to the 15th of August, 1990, and that he would be there with his attorney. I advised him that the parties would be order-

ed to mediation at Family Court Services who would sort the matter out. Mr.Gruskin failed to appear (as per his agreement) on August 15, 1990 at 1:30 p.m. and the Court ordered me to mail notice to Mr. Grushkin of a continued hearing date... on August 29,1990 I was directed to send Mr. Grushkin yet another letter indicating there was a screening appointment and that if he failed to appear the Court would issue an order for temporary change of custody... The last date was September 6, 1990, and again he failed to appear and the Court changed custody." Appendix H: 1: 28, 2: 1-21.

The issue presented is whether a state may revoke final judgments on a claim an attorney orally served a party by an alleged telephone call ?

IV.

THE LETTER NOTICE WITHOUT SPECIFYING ANY GROUNDS TO REVOKE THE FINAL JUDGMENT OFFENDS DUE PROCESS OF LAW

As the sixty second court transcript indicates, Appendix F, the court revoked the final judgment

after three years without notice and without a motion and on a claim the attorney mailed a letter to the Petitioner. " In this matter we continued so I could serve a proof of service and letter on Mr. Grushkin so he could appear. " Appendix F: 2:5-7, and " This is the letter I sent in. .." The letter, in fact, merely claimed " re: notice of hearing. Please be advised the court has ordered you to appear for a screening at Department 17 at Santa Clara County Superior Court on September 6, 1990 at 8:45 a.m. Should you fail to appear, as you have on August 15 th and August 23rd, the Court will grant us a change of custody by default." Appendix H, Exhibit B.

The question presented, apart

from the fact this letter was actually mailed September 4, 1990 so that it could not be received in time for the 8:45 a.m. hearing on September 6, 1990, is whether this letter is sufficient under this court's rulings that even convicted prisoners who face parole loss can not be denied their right to parole without " written notice of the claimed violations," Morrissey v. Brewer, (1972) 408 U.S. 470, nor may a juvenile and his parent be denied each other's companionship and the child detained without notice sufficiently in advance of a scheduled court proceeding so that there is a reasonable opportunity to prepare and the notice must set forth " the alleged misconduct with particularity," In re: Gault,

(1966) 387 U.S. 33.

V.

THE FAILURE TO REQUIRE THE STATUTORY MOTION DENIED PETITIONER AND HIS DAUGHTER THE EQUAL PROTECTION OF STATE LAW

Although state law required a specific court form of Notice of Motion be used to modify a judgment which form has been approved by the State's Judicial Council, the judge and lawyer revoked the final judgment admitting it was never used. (4)

Said form requires that the moving party set forth with parti-

(4) Ca. Civil Code section 1003 states " An application for an order is a motion. " California Rules of Court, Family Law Rule 1225 (a) provides, " an application for ..an order against a party.... shall be in the form prescribed by rules ... 1285.10. California Rules of Court, Rule 1285.10, prescribes the written form for a Notice of Motion for Modification of a Judgment in Family Law.

cularity the facts in support of a change of a pre-existing court order, the orders requested and whether it is modifying a prior order or judgment, and if so, what judgment or order. Appendix I.

Was Petitioner and his daughter denied the equal protection of state law by the state court's refusal to void the ex parte order when the required motion for all other citizens was never used ?

Is this court's ruling in In re: Gault, (1966) 387 U.S. 31,34, that " Due Process does not allow a hearing to be held in which a youth's freedom and his parents' right to his custody are at stake without giving them timely notice, in advance of the hearing, of the specific issues that they must meet

and which required " the child and his parents be notified in writing of the specific charge or factual allegations to be considered at the hearing, and that such written notice be given at the earliest practicable time, and in any event sufficiently in advance of hearing to permit preparation," applicable to California state practices where no such writings are required prior to revocation of permanent and final custody judgments by state judges ?

VI.

WAS DUE PROCESS AND/ OR EQUAL PROTECTION OF STATE LAW DENIED BY MAILING A LETTER NOTICE TWENTY FOUR HOURS BEFORE HEARING

Civil Code section 1010 states " Notices must be writing, and the notice of the motion... must state when, and the grounds upon which it

will be made, and the papers, if any, upon which it is based..." As indicated in footnote 4, motions in family law must be on the prescribed written motion forms approved by the Judicial Council.

Ca. Civil Code section 1005, states ' when a written notice of motion is necessary, it must be given at least ten days before the time appointed for the hearing." Civil Code section 1005.5 provides." A motion upon all the grounds stated in the written nottice thereof is deemed to have been made and to be pending before the court for all purposes, upon the due service and filing of the notice of motion, but this shall not deprive a party of a hearing of the motion to which he is otherwise

entitled." Service of said notices of motions must be mailed at least fifteen days prior to a hearing if served by mail under Ca. Civil Code section 1013.

As Appendix B, exhibit C indicates, the attorney mailed his letter September 4,1990 when the hearing was 8:45 A.m. on September 6,1990. The letter the attorney gave to the judge was dated August 30,1990 and the attorney did not disclose it was not mailed until September 4,1990. " This is the letter I sent in.." Appendix F:2:9.

Is the holding of In re Gault supra, that notice must be given sufficiently in advance to prepare for the hearing violated by mail notice forty eight to twenty four hours before hearing ? Is the

equal protection of state law requiring 15 days notice if sent by mail violated by a court allowing an attorney to claim to have mailed a letter less than the required 15 days before the hearing ?

VII.

DOES DUE PROCESS OR EQUAL PROTECTION OF THE LAW REQUIRE COURT PROCEEDINGS BE REPORTED ?

The judge had court proceedings without a motion and a proof of any service on the Petitioner and without his presence on five different days- July 16, August 15, August 23, August 29, and September 6,1990. Appendix B:23-27.

However, she had none of the proceedings reported by her court reporter except September 6, 1990. Appendix F and Appendix B: 2, Footnote 2. On July 16 and August 29

the calendar shows " not reported." On August 23, the judge permitted the lawyer to " waive a reporter." There is no record with the judge on August 15. When state practice is that a judge must have all proceedings reported unless both parties waive it, and state law provides a citizen has the right to appeal Family Court orders, In re Marriage of Skelley (1976) 18 Cal. 3d. 365, is a citizen denied their rights to Petition for redress of grievances under the First Amendment by a state court's practices permitting the judge to prevent the right of appeal by refusing to have select cases reported ?

Where, as here, the citizen alleges that the black judge and the black lawyer revoked his final

judgment on behalf of an Hispanic parent, with no compliance with state law, and did so solely by reason of Petitioner's white race, issues addressed by this court in MacDonald v. Sante Fe Trail Transp. Co., 427 U.S. 282, is the judge's refusal to have the proceedings reported so that Petitioner has evidence in support of his equal protection claim, such an impediment to access to the appellate courts that the refusal to report his proceedings denies him equal protection of law under this Court's reasoning in Boddie v. Connecticut, 401 U.S. 371 ? (5)

(5) The Judge's Declaration said, "On ..August 19, 1990.. I received a..call from..(my former husband). He stated, " If you would stop giving your money to that white boy lawyer of yours, you would have money to take care of your children Dec., L. Cordell, Sept. 26, 1990. Cordell, supra.

VIII.

IS SAN JOSE'S " SCREENING " UNCONSTITUTIONAL FOR FORCING WAIVER OF CONSTITUTIONAL RIGHTS ?

The ex parte order revoking the final judgment of custody to Petitioner stated, " Should Petitioner wish to contest this order, the parties shall immediately participate in screening through Family Court Services on an emergency basis." Appendix E:4. " Screening " requires the Petitioner ignore the unconstitutional acts that occurred and now let a lay counselor make the court order. Appendix B:48-52. " Screening " provides, " The court will make temporary orders based on the screening counselor's recommendation when the parties do not agree." Appendix B: 51.

Similar schemes allowing a

lay counselor or a lawyer to make judicial orders were declared unconstitutional as an unlawful delegation of judicial power to a private person in Marriage of Matthews, 101 C.A. 3d. 816,817 and Reaves v. Superior Court, 99 Cal. Rptr. 156. The question is whether such unlawful delegation of judicial power to a lay person violates this court's holdings in Eubank v. Richmond 226 U.S. 137,143 and Seattle Trust Co. v. Roberge, 278 US 116 (1928) ? Appendix B: 52-53.

The concomitant forfeiture of Petitioner's right to see his child if he does not give up his right to a trial, a real judge, some kind of a hearing, a public courtroom, a court reporter, some kind of evi-

dence, some kind of rights to confrontation and cross-examination, and some kind of findings based on the prevailing law concerning not dislodging children from their homes without " some kind of facts and circumstances occurring subsequently (which) are of a kind to render it essential or expedient for the welfare of the child " to change custody, In re; marriage of Carney (1979) 24 C.3d. 725, 730, 157 C.R. 383, 598 P. 2d. 36, at p. 730, appears to be the same kind of prohibited trading off of constitutional rights declared unconstitutional in Frost, supra and Loving v. Verner 388 U.S.1 (1967).

IX.

ARE THE STATE LAWS UNCONSTITUTIONALLY IMPAIRING THE OBLIGATION OF CONTRACTS ?

The question presented is whether this court's holding in United States Trust Co. v. New Jersey, 431 U.S.1 (1977) that state laws that impair existing contracts are void under Article 1, section 10, when the impairment is substantial, when the state has no legitimate and significant public purpose and when the adjustment of the contracting parties' rights is not on reasonable conditions and of a character appropriate to a public purpose, apply to void a claim that the state may void this citizens' contract with his duly licensed lawyer, because she will not take an oath to a private volunteer just as this Father will not submit his parenting rights and his daughter's life to a lay person either.

X.

DO STATE PRACTICES OF REVOKING FATHER'S PERMANENT CUSTODY WITHOUT GROUNDS DENY FATHERS THE EQUAL PROTECTION OF THE LAW BY REASON OF SEX DISCRIMINATION

The sixty second transcript of the revocation leaves no doubt that the judge invidiously discriminated against the Petitioner and solely by reason of his Male sex as a custodial parent. Appendix F. No inquiry is made into fitness of the mother. No inquiry is made into the state standard requiring that only exigent circumstances justify a change of custody of a child. Carney, supra. No inquiry is made into the best interests of the child as required by state law. It is assumed that a child should be in a mother's custody and not in the father's, even when the mother

admits she has not seen her child for over four months and when she had already abducted and kidnapped her daughter. Appendix F. The judge just assumes a custodial father is unfit, and a mother fit.

Although state law provides that " in making an order for custody to either parent,.. the court shall not prefer a parent as custodian because of that parent's sex," Ca. Civil Code section 4600 (b)(1), the transcript of the cursory and perfunctory inquiry concerning the mother leads little doubt the judge is discriminating against the custodial father solely by reason of his sex. The question then is whether the sixty seconds of perfunctory, .rrelevant and inappropriate questioning by the judge

which is sex- biased such a " hearing appropriate to the nature of the case," as required by Mullane v. Central Hanover Trust Co., 339 U.S. 306 (1950), or was it evidence of a predetermined judgment to award maternal custody and revoke the permanent custody judgment to the father, because of " ancient canards about the role of women," " overbroad generalizations," sex stereotyping about nurturing capacities, where sex is to be an inaccurate proxy for the required hearing of best interests of a child, and where the judge is substituting gender in order to clear a calendar and avoid hearings. Appendix F.

CONCLUSION

The State of California is

turning law on its head. Vested rights are revoked with none, and then the right to any rights is conditioned on submission to any private person's arbitrary whim.

Petitioner respectfully requests this Court hear his Petition and declare state statutes, as applied, authorizing ex parte revocations of final judgments and ensuing demands he forfeit his right to a trial and judge in order to parent at all, be declared offensive to basics of " Due Process and Equal Protection of the Law."

RESPECTFULLY SUBMITTED,

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